

PATENT APPLICATION

UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of: ) Group Art Unit: 1761  
SAVUR et al. )  
Serial No.: 09/807,860 ) Examiner: Weinstein, Steven L.  
Confirmation No.: 6235 )  
Filed: April 18, 2001 )  
Atty. File No.: 50013-00001 )  
For: "APPARATUS FOR CONTROLLED )  
VENTING OF CHAMBER" )

CERTIFICATE OF MAILING	
I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 ON FEBRUARY 8, 2005.	
MARSH FISCHMANN & BREYFOGLE, LLP	
BY:	 Lori Lane

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

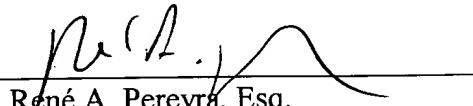
Attached hereto is a Declaration that is being submitted under 37 C.F.R. § 1.132. The Declaration is from Sanjay Savur, an expert in the field of controlled atmosphere chambers. The Declaration was previously submitted with an Amendment and Response on August 30, 2004, and is now being resubmitted with a Response to Notice of Non-Responsive Amendment.

Respectfully submitted,

MARSH FISCHMANN & BREYFOGLE LLP

Date: February 8, 2005

By: Rene A. Pereyra

  
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IN THE MATTER OF  
United States Patent Application No. 09/807,860  
assignee:  
**Mitsubishi Australia Ltd**  
**Declaration**

I, Sanjay Savur, of 120 Collins Street, Melbourne, Victoria 3000, Australia, do solemnly and sincerely declare as follows:

1. I am one of the inventors of the invention described and claimed in US Patent Application No 09/807,860 entitled "Apparatus for controlled venting of a chamber".
2. I hold the position of Unit Leader of the MAXtend Business Unit of Mitsubishi Australia Limited, and have been familiar with the field of controlled atmosphere systems for transportation of perishable products since around 1993. "MAXtend" is the brand name of the controlled atmosphere system devised and marketed by Mitsubishi Australia Limited.
3. I have read the published prior art references Huston (WO'719), Samuel (EP'021), Bishop (WO'753), Fukado (JP'083), and Lovegrove (EP'042), and understand the disclosures of these documents. Further, I have read the US Patent and Trademark Office official communications of 11 March 2003, 3 September 2003, and 24 March 2004.
4. Nothing in the above-mentioned prior art publications describes or suggests to me the concept of controlling CO<sub>2</sub> levels without actually monitoring CO<sub>2</sub> concentration, despite comments made by the Examiner in previous official communications. In my opinion, the skilled person would have understood from these documents that, if CO<sub>2</sub> levels were to be controlled, CO<sub>2</sub> levels would have to be monitored.
5. The Examiner has correctly pointed out that documents such as Lovegrove teach the monitoring of O<sub>2</sub> and the resulting inlet of ambient air. Lovegrove also suggests that the additional monitoring of CO<sub>2</sub> is no more than a preferable step. However, it is clear to me that when Lovegrove actually wishes to provide an

## DECLARATION

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"optimum or predetermined value or range of values", the document makes manifestly clear that the O<sub>2</sub>, the CO<sub>2</sub>, and indeed the temperature, must all be monitored (see, for example, page 4, line 20 – page 5, line 15), and a CO<sub>2</sub> scrubber must therefore be operated in response to this monitoring. In other words, Lovegrove falls far short of the present invention.

6. Similarly, in Bishop, a process is described which involves a repeated scrubbing cycle, whereby the chamber atmosphere is drawn over a carbon bed when the CO<sub>2</sub> reaches a set level (page 7, paragraphs (d) to (g)). This enables the CO<sub>2</sub> content to be maintained at a desired (non-zero) level. Although it is not explicitly stated in Bishop that the CO<sub>2</sub> level is independently monitored, in my expert opinion this is clearly an essential part of the process. It was not possible in 1994 (the application date of Bishop) to carry out the described steps without using a CO<sub>2</sub> monitor, and, in my opinion, use of such a monitor is not discussed in the document for the simple reason that it is completely apparent to the skilled reader. It is an implicit part of the teaching of this reference.
7. This is the case throughout the examples from the prior art, as only with the realisation of the present invention has it become possible to maintain desired O<sub>2</sub> and CO<sub>2</sub> levels by monitoring the O<sub>2</sub> level only (in the presence of a prescribed quantity of CO<sub>2</sub> absorbent material).
8. Further, I have read the published prior art reference Bedrosian (US'152), and understand the disclosures of this document. Bedrosian describes a thin film package, which achieves its desired equilibrium by way of a differential permeability to O<sub>2</sub> and CO<sub>2</sub>. This is an approach wholly unrelated to that of the present invention. The Examiner appears to reason that it is possible to take the teaching of Bedrosian and apply it to one or more of the other pieces of prior art which discuss controlled atmosphere chambers, and so arrive at the claimed invention. In my opinion, this is just not possible. Bedrosian describes a thin-film device, and once the package is sealed there is no further monitoring and no further control.
9. The surprising and advantageous nature of the present invention has led to something of a revolution in the field of transport of perishable products, and in my opinion that success has stemmed from the particular advantages (simplicity, inexpensive installation and operation, applicable to a very wide variety of situations) which are directly attributable to the subject matter of the claims of this application.
10. In particular, the portability and flexibility of the MAXtend system has enabled it to be retrofitted into any standard refrigerated container (including temporarily installed as a 'one-trip' solution) to provide a controlled atmosphere system, and

**DECLARATION**

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has thus allowed exporters of perishables to use any shipping line they choose, in contrast to the conventional practice of using only those shipping lines with a stock of relatively expensive purpose-built controlled atmosphere containers. This has meant that exporters have gained access to significantly more shipping space than hitherto available, thus considerably 'levelling the playing field' in the industry, enhancing competition by allowing shipping lines to gain access to high-margin perishable cargo without the need for investment in costly purpose-built controlled atmosphere containers.

I am aware that willful false statements and the like are punishable by fine or imprisonment, or both under 18 U.S.C. 1001. All statements that are based upon my own knowledge are true, and all statements made on information and belief are believed to be true.

DECLARED AT Melbourne, Australia  
this twenty-ninth day of August, 2004



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Sanjay Savur